

REMARKS

In the Office Action, claims 1- 28 have been rejected. Favorable reconsideration of the application is requested in light of the following remarks.

The present invention is directed to a novel composition which functions as an all-in-one shaving gel, moisturizer and after shave. In particular, the composition is specially formulated to be used without applying water to the face -- the composition is applied, the shaving is done and the remaining composition on the face is rubbed into the skin. To accomplish all of these functions using a simple composition required significant ingenuity, both from a standpoint of the key ingredient as well as the specific percentages employed.

In general, none of the references provided by the Examiner, either alone or in combination, show or suggest the invention as claimed. The Examiner has merely picked references -- have an astounding 10 references, and using improper hindsight construction, has chosen amongst these references to come up with a combination which the Examiner believes reads on the claims. However, there is no legally cognizable motivation to combine the references and the fact that 10 were chosen clearly demonstrates how far the Examiner is stretching. Moreover, the Examiner's rationale for the combination, "obvious to try," is not acceptable under the law.

§ 103(a) Rejections

Claims 1-11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith (EP 0339634) in combination with Lentini, Stoner, George, Cohen, Berger, Soler, Ha, Chekroun, and McAtee. These rejections are respectfully traversed. The cited references taken singly or in combination do not show or suggest the present invention as claimed.

The Examiner states that Smith teaches a shave gel composition comprising water (40-90%), a salt of hyaluronic acid preferably sodium (.01-5.0%), allantoin (.01-1.0%), botanical plant extracts, post foaming agents, and additional additives like perfumes, skin conditioners, preservatives and humectants, and soap (4-35%).

However, at a minimum, Smith does not show or suggest 0.25 to 5% silicone lubricant as recited in the claims, and thus Smith does not show or suggest the present invention.

Stoner does not make up for the deficiencies of Smith. Stoner teaches a complex two-step shaving treatment using two different compositions. In the first composition, Stoner suggests the use of humectants and silicones; however, no percentages are suggested, and the percentage of the ingredients is critical to the present invention. Moreover, Stoner does not teach the use of PEG-8 dimethicone. The percentage ranges of the recited ingredients result in certain advantages of the composition that are not shown, taught, or suggested by Stoner. Thus Stoner, alone or in combination with Smith, does not render the present invention obvious.

Cohen has nothing to do with shaving gels -- it concerns a pigmented make-up composition. For this reason alone, there is no basis to combine it with the foregoing references. Moreover, Cohen doesn't show 70-95% water or 0.01 to 5% sodium hyaluronate. Nor does it show the use of panthenol in the range of .05 to .5%. Thus Cohen also does not make up for the deficiencies of the foregoing references.

Berger shows the use of chlorphenesin in topical applications for the treatment of skin diseases. However, the ranges of use far exceed the ranges recited in the present claims. The range taught in Berger is from 2 to 15% whereas the range recited in the present claims is .1 to .2%. In any event, the Examiner has not provided any support for the alleged motivation to combine the teachings of a reference in the field of skin disease treatment with Smith or Stoner which teach shaving compositions.

Soler also has nothing to do with shaving compositions. It merely shows the use of willow herb extracts in the range of .1 to 30% and the use of allantoin in the range of .05 to .2% in topical treatment formulations for a variety of disorders. It clearly does not make up for the deficiencies of the foregoing references. Moreover, the Examiner has provided no evidence of the alleged motivation to combine the teachings of a reference in the field of antiandrogens of plants with the Smith or Stoner which teach shaving compositions.

Ha is directed to a topical composition used to cover pores. It has nothing to do with shaving gels. Even its reference to PEG-8 is different as Ha shows the use of PEG-8 in the range of 5 to 15% and no range for the use of licorice extract. In contrast, the claims of the present composition recite .25 to 5% use of PEG-8 dimethicone. The claims of the present composition also recite specific ranges of licorice extract (.001 to .01%) which result in certain advantages of the claimed composition when combined with other recited ingredients of the claimed composition. Thus, Ha alone or in combination with the foregoing references does not show or suggest the present invention.

Chekroun (EP 0554322B1), relates to a topical skin treatment, not a shaving composition. At best it shows .13% phenonip in dermic creams and lotions. In contrast, the claims of the present composition recite the use of phenonip in the range of .5 to 1.0%. Furthermore, the Examiner has not provided any support for the alleged motivation of someone of ordinary skill in the field to combine a reference in the field of dermic creams with shaving compositions.

McAtee is directed to a composition for the topical delivery of actives -- it has nothing to do with shaving compositions. Equally so Lentini has nothing to do with the shaving composition of the present invention.

As stated above, the Examiner has simply picked and chosen references and used hindsight reconstruction. None of the references however, alone or in combination, show or suggest the present invention. One skilled in the art would certainly not find any motivation for combining their teachings as suggested by the Examiner and thus the rejection under Section 103 should be withdrawn.

Claims 12, 13, and 17-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith (5,958,394) in combination with White, Smith (EP 0339634), and Rucker. Claim 18 has been cancelled without prejudice. These rejections as to the remaining claims are respectfully traversed. The cited references taken singly or in combination do not show or suggest the present invention as claimed.

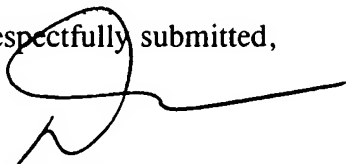
None of the references cited by the Examiner show or suggest spreading or rubbing residual shaving composition on the shaved area. This is an entirely novel step in the shaving process. The Examiner argues that it would have been obvious to one of ordinary skill in the art to combine the teachings of the cited references to derive a method of shaving that includes the step of spreading residual shaving composition on the shaved surface. However, the Examiner does not provide any evidence to support the allegation that this step obvious to one of ordinary skill in the art. The Examiner is using improper hindsight reconstruction to derive a method of shaving from the cited references that includes rubbing residual shaving composition on the shaved area, a step not shown or suggested by any of the references.

Claims 14 - 16 have been amended to correct the error regarding claim dependency. The claims now recite dependency from claim 12 as was the original intention. Claims 26 and 28 have been amended to recited a multiple-blade or triple-blade razor rather than reference to the Mach3 razor blade to overcome the Examiner's rejection of the use of the trademark Mach3.

CONCLUDING REMARKS

In view of the foregoing remarks, it is believed that all claims are in condition for allowance. Reconsideration of all rejections and a notice of allowance are respectfully requested. Should there be any questions regarding this application, the Examiner is invited to contact the undersigned attorney at the phone number listed below.

Respectfully submitted,



Dated: July 29, 2002

Rod S. Berman
Reg. No. 31,483

JEFFER, MANGELS, BUTLER & MARMARO LLP
Tenth Floor
2121 Avenue of the Stars
Los Angeles, CA 90067
Tel: (310) 203-8080

VERSION WITH MARKINGS TO SHOW CHANGES

In the Claims:

13. (Amended) A method as recited in claim 12 [9] further comprising applying water to the surface area.

14. (Amended) A method as recited in claim 12 [9] wherein the composition contains one or more alkaloid-heavy extracts.

15. (Amended) A method as recited in claim 12 [9] wherein the composition contains sunblock.

16. (Amended) A method as recited in claim 12 [9] wherein the hydration time for the hair to soften is between one second and 60 seconds.

26. (Amended) A shaving kit as recited in claim 25 wherein the multiple blade razor is a triple-blade [Mach3] razor blade.

28. (Amended) A method of shaving using a multiple-blade [Mach3] razor blade, the method comprising applying a shaving composition containing sodium hyaluronate, a humectant, and a silicone lubricant and using a reduced amount of water to rinse the multiple-blade [Mach3] razor blade thereby increasing the number of times the razor blade can be used effectively.

29. (New) A method as recited in claim 28 wherein the multiple-blade razor blade is a three-blade razor blade.